IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1021 OF 1994

1. M/s. Fixophotos,
   D-24, M.I.D.C., Satpur,
   Nashik-422 007.

2. Shri. Harish Laxmichand Sanghavi.

3. Shri. Laxmichand Chhabildas Sanghavi.

4. Shri. Shailesh Laxmichand Sanghavi.

5. Mrs. Usha Lalwani.

....Appellants.

Vs.

The Nashik Merchants' Co.operative Bank Ltd.,
Nashik- 422 001.

....Respondent.

Mr. S.R. Rawell i/by S.R. Rawell and Company for the appellants.

Mr.K.S. Patil for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED:11TH FEBRUARY,2005.

ORAL JUDGMENT :

. Heard Advocate for the appellants and the respondent-bank..

2. The original plaintiffs had filed a suit

against the defendant-bank for recovery of Rs.2,09,350/-. Out of which the Trial Court had granted them a decree for Rs.20,337.62paise. Being dissatisfied by the said decree, the present appeal is filed.

3. It is the case of the plaintiffs that the work of printing 16000 Identity cards of the members of the respondent-bank was entrusted to them vide work order dated 25.7.1983. Following are the terms and conditions upon which the said work was entrusted to the plaintiffs:

(1) Near about 16000/- photographs are to be taken for the share holders of the bank in duplicate.

(2) One copy of each photograph is to be prepared for share holder therein the Name, address, signature of share holder and signature of issuing authority i.e. bank in three colours.

(3) Different colours of printing and cards are to be used for photograph in Nashik city and out of Nashik.

(4) The work of photographs is to be completed within 90 days from the date of lists for the purpose supplied.

(5) Cost of each photograph (in duplicate i.e. with banks copy) will be Rs.11.25 exclusive of 10% sales tax. No other taxes of any expenses will be suffered by the bank.

(6) Bank copy of each photograph is to be provided in plastic file/folder.

(7) Photographs to be taken date, time, place of photograph to be adjusted by the company in consultation with bank.

(8) After the date of final work specified in clause 4 above the photographs are to be delivered at banks premises i.e. "Dhanawardhini", Tilak Path, Nashik.

(9) The necessary advances will be paid against the work done from time to time according to mutual understanding and

personal discussion.

4. The plaintiffs were to be given Rs.11.25ps. exclusive of 10% sales tax as costs of each identity card. The price therefore, comes near about Rs.1,75,000/-. It is the case of the plaintiffs that as per the agreement, the work was to be completed within 90-days. It was the responsibility of the bank to make available to the plaintiffs at least 500 members per day for being photographed at given site. It was also the responsibility of the bank to furnish the list of all the members in Marathi and since such list was not furnished by the bank, the plaintiff had to incur expenses for preparing such list and therefore, the plaintiff claimed Rs.8000/- for the same. Then, further claim of the plaintiffs is that they had to send photographers at different places at Nashik where the members of the defendant-bank were scattered and thus required to spend huge expeses i.e. they have to pay Rs.500/- per day to each photographer excluding travelling charges for the said visit. According to them they were also required to pay additional expenses particulars of which have been given by the Trial Court in

Paragraph 6 of his Judgment. Therefore, in this background, the plaintiffs had filed a suit for recovery of Rs.2,09,350/-.

5. The claim of the plaintiffs was opposed by the defendant-bank on various grounds. According to them, whatever the work was done by the plaintiffs, the bank had paid for that. According to the defendant bank, the plaintiffs had prepared identity cards of 11300 members and the plaintiffs were paid Rs.1,84,640/- and the balance amount of Rs.20,337.62ps. was to be paid. The suit was rightly decreed by the Trial Court . Therefore, the counsel for the respondent bank contended that the bank has not challenged the decree for Rs.20,337.62ps. passed against the bank. Admittedly the plaintiffs were entitled to claim that amount. However, the remaining claim of the plaintiffs was not tenable nor maintainable. The bank has never agreed to bear expenses of the photographers which were sent at different places and taking photographs of the different members at different places was a part of the contract. He also pointed out that from the evidence of the bank witness, it is clear that the bank had issued public notice notifying the members to give co.operation to

the plaintiffs to take their photographs for preparing identity cards. Regarding the other claim of the plaintiffs, the counsel for the respondent contended that no evidence has been adduced by the plaintiffs except P.W.No.1 Harish and his testimony on oath regarding so called expenses incurred by the plaintiffs under different heads as per the particulars given by the Trial Court in Paragraph 6 of the Judgment. For example, it was pointed out that the plaintiffs had sent photographers at different places and paid them Rs.500/- per day but there was no evidence of any of the photographer of the plaintiffs to prove this aspect of the matter. Same contention was raised by the counsel for the respondent regarding the other heads under which the plaintiffs had claimed the said amount. Therefore, in short, what was awarded by the Trial Court was right and the plaintiffs are not entitled to any increase in the amount of the decree.

6. I have given anxious consideration to the submissions made by the parties. It is clear from the work order dated 23.7.1983 that the responsibility of the bank was only to pay the amount to the plaintiffs after the work was over at the rate of Rs.11.25ps. per identity card exclusive

of 10% Sales tax. Apart from that, there was no obligation of the bank to do anything further in the matter and/or in furtherance of the said work contract. The appellant’s contention that the bank had committed breach of the agreement is not at all justified because there is no obligation of the bank at all except to make final payment or give advances to the plaintiffs. The learned counsel for the bank further contended that the work order does not stipulate or mention that the bank has to make available to the plaintiffs 500 members per day for the purpose of taking photographs. When the plaintiffs took the work of the bank which is a co.operative bank,they knew that the members of the bank are always spread over in the District and when they had undertaken such job, they have to send photographers at different places. Therefore, the rate which he had quoted is supposed to be inclusive of all the expenses incurred by them in that regard. The bank had co-operated with the plaintiffs by issuing advertisement in the local newspaper and also appeal to its members to be available for taking photographs. If that was not done by the bank, then plaintiff would have been justified in claiming expenses incurred or for causing delay.

7. Further, though initially the period of agreement was 90-days, both the parties have waived their respective rights in that regard and the contract is allowed to be continued beyond the period of 90/-days. It is not the case of the bank that on account of delay they were entitled to deduct any amount or claim some compensation. The bank had permitted the work to be carried out beyond the period of 90/-days and without raising any objection in that regard made payment as per the bills submitted by the plaintiffs. Therefore, this is not a case where the bank was trying to take advantage of this clause of limitation to deprive the plaintiffs from their justifiable claim.

8. Regarding the expenses incurred by the plaintiffs as given under different heads in Paragraph 6, item (b), (e) and (i) which are reproduced as under, are required to be rejected.

> (b) Expenses incurred by our clients on travelling stay, wages and allowances to photographers on extra days due to failure of your bank to complete the photography programme in the stipulated per day.

(e) Screen printing of 17000 ID cards in the additional colours.

(i) 142 days x 500 photos per day 71000 less 12079 photos taken.

9. So far as item (b) is concerned, that was part of the business of the plaintiffs and the work undertaken by them and therefore, plaintiffs are not entitled to claim the said amount. So far as item (e) is concerned, there is no evidence or admission on the part of the witness examined by the bank. So far as item (i), this claim is also not maintainable when plaintiffs were paid as per the bills and as per the work order.

10. However, so far as item (a) is concerned, it is the expenses incurred by the plaintiffs for translating list from English into Marathi at 0.50 paise per member, item (d) costs of preparation of ID cards of additional/new members cards @ Rs.2.75 per card, item (f) expenses for preparing ID cards of staff members, item (g) costs of 200 printed cards supplied extra at the rate of Rs. 2.75 per card and (h) costs of supply of 105 extra file

sheets @ Rs.15.50 per sheet. Out of these claims, the claim under items (d) and (a) are entitled to the plaintiffs because witness of the bank had admitted that they did not supply the list of members in Marathi. Admittedly, the identify cards to be prepared and printed in Marathi and it is possible and probable that the plaintiffs incurred expenses for doing the said work. Therefore, out of the claim from item (a) to (i), the claim in regard to item No.(a) of Rs.8000/-, item No.(d) Rs.2750/- plus item (g) Rs.550/- is only required to be granted to the plaintiffs. Hence, this order.

ORDER

a) Appeal is partly allowed.

b) The appellants will be entitled to recover an amount Rs.11,300/- in addition whatever has been awarded by the Trial Court with proportionate costs and 12% p.a.interest on the said amount from the date of the suit till payment.

(D.G. DESHPANDE, J.)